

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
CLERK

3/18/2015

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

-----X  
EAST END ERUV ASSOC., et al., :  
 :  
Plaintiff, : 11-CV-213 (AKT)  
 :  
V. : February 26, 2015  
 :  
VILLAGE OF WESTHAMPTON BEACH, : Central Islip, NY  
et al., :  
Defendant. :  
-----X  
VERIZON NEW YORK, INC., :  
et al., :  
Plaintiff, : 11-CV-252 (AKT)  
 :  
V. :  
 :  
VILLAGE OF WESTHAMPTON BEACH, :  
et al., :  
Defendant. :  
-----X  
EAST END ERUV ASSOC., et al., :  
 :  
Plaintiff, : 13-CV-4810 (AKT)  
 :  
V. :  
 :  
THE TOWN OF SOUTHAMPTON, :  
et al., :  
Defendant. :  
-----X  
TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE A. KATHLEEN TOMLINSON  
UNITED STATES MAGISTRATE JUDGE

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APPEARANCES:

For the Plaintiff: ROBERT SUGARMAN, ESQ.  
YEHUDAH BUCHWEITZ, ESQ.  
ERICA WEISGERBER, ESQ.  
ZACHARY MURDOCK, ESQ.

For the Defendant: BRIAN SOKOLOFF, ESQ.  
MAUREEN LICCIONE, ESQ.  
DAVID ARNSTEN, ESQ.  
JOSH SHTEIERMAN, ESQ.

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1 THE CLERK: Calling cases 11-CV-213, East  
2 End Eruv Association, Incorporated v. The Village of  
3 Westhampton Beach, et al., 11-CV-252, Verizon New York,  
4 Incorporated, et al. v. Village of Westhampton Beach,  
5 et al., and 13-CV-4810, East End Eruv Association,  
6 Incorporated, et al. v. The Town of Southampton, et al.

7 Please state your appearances for the  
8 record.

9 MR. SUGARMAN: Good afternoon, your Honor.  
10 Robert Sugarman and Yehudah Buchweitz for the East End  
11 Eruv Association.

12 MS. WEISGERBER: Erica Weisgerber, Debevoise  
13 & Plimpton, for Verizon New York. Good afternoon, your  
14 Honor.

15 THE COURT: Good afternoon.

16 MR. MURDOCK: Zachary Murdock, Lazer  
17 Aptheker Rosella & Yedid, for LIPA.

18 MR. SOKOLOFF: Brian Sokoloff, Sokoloff  
19 Stern LLP, for the Village of Westhampton Beach.

20 MS. LICCIONE: Maureen Liccione, Jspan  
21 Schlesinger, for the Town of Southampton.

22 MR. ARNTSEN: Good afternoon, your Honor.  
23 David Arntsen and Josh Shteierman for the Village of  
24 Quogue.

25 THE COURT: Good afternoon to everybody.

1 It's been a while. I decided that I would rather have  
2 you in than try to have a phone conference with this  
3 small army of attorneys. Really, my primary matter I  
4 want to deal with this afternoon is to give each of you  
5 an opportunity to tell me where we're going with these  
6 cases in light of the decisions -- both the published  
7 decision in the Second Circuit from Judge Raggi, Jacobs  
8 and Livingston and the other summary order that was  
9 issued.

10 I really need to come to some resolution  
11 here. If the cases are continuing, we need to get the  
12 rest of the schedule in place. That's really what I  
13 want to talk about today. So let me start with  
14 plaintiffs.

15 MR. SUGARMAN: Thank you, your Honor. We'll  
16 take the cases one by one.

17 THE COURT: Whatever you wish.

18 MR. SUGARMAN: First, with respect to  
19 Westhampton Beach, the decision of the Second Circuit  
20 eliminates the second of the arguments that Westhampton  
21 Beach had with respect to Eruv. The first one was the  
22 authority issue, which you decided adverse to  
23 Westhampton Beach, and the second was the establishment  
24 clause issue, which the Second Circuit has decided  
25 adverse to Westhampton Beach.

1           So the plaintiffs have requested that you  
2 rule on the plaintiffs' summary judgment motion on  
3 their declaratory judgment claim and to dismiss the  
4 affirmative defenses, all of which revolve around those  
5 two issues. So with respect to Westhampton Beach, the  
6 case is ripe for a decision on summary judgment on the  
7 plaintiffs' declaratory judgment claim and the  
8 defendants' affirmative defenses.

9           That would leave in Westhampton Beach the  
10 remainder of plaintiffs' claim, free exercise, 1893,  
11 Rilupa (ph), tortious interference. With respect to  
12 those, there needs to be the completion of discovery.  
13 Document discovery has been complete and depositions  
14 need to be taken. So that's the situation with respect  
15 to Westhampton Beach.

16           With respect to Quogue, your Honor invited  
17 the parties to answer your question as to whether you  
18 had sufficient information to decide the issue of the  
19 sign law in Quogue. The parties briefed that by letter  
20 and that is sub judice before your Honor. So with  
21 respect to Quogue, the sign law issue is ripe for your  
22 decision.

23           That would leave -- let me add one thing to  
24 that. The Second Circuit's decision that it is not a  
25 violation of the establishment clause takes one of the

1 Village of Quogue's arguments in support of their sign  
2 law decision away because one of those arguments was --  
3 and one of the bases of the Quogue Village board  
4 decision that the leches (ph) violated the sign law was  
5 the concern that any other decision would be a  
6 violation of the establish clause. Based on the Second  
7 Circuit decision, that argument no longer holds water.

8 So with respect to Quogue, there is the  
9 issue of the sign law and then there are the other  
10 issues, same as Westhampton Beach, free exercise under  
11 the First Amendment, 1983, Rilupa, et cetera.

12 With respect to Southampton, you dismissed  
13 the claim with respect to the sign law of the Village  
14 of Southampton -- sorry, the Town of Southampton, and  
15 the plaintiffs have filed an Article 78 proceeding in  
16 state court which is fully submitted to the supreme  
17 court justice and we're awaiting a decision with  
18 respect to that. You stayed the remainder of that case  
19 pending the decision on the resolution of that issue.

20 THE COURT: Yes.

21 MR. SUGARMAN: What we would request -- and  
22 to back up a second, you have stayed depositions in the  
23 Quogue and Westhampton Beach cases. So with respect to  
24 the three in terms of discovery, this case is now in  
25 its fifth year and we would --

1 THE COURT: God help us all.

2 MR. SUGARMAN: At least we're all still here,  
3 which is good news. We would request that the stay in  
4 Southampton be lifted and that we be allowed to proceed  
5 with depositions in Westhampton Beach and Quogue, so  
6 that we can move the case along and so that when your  
7 Honor renders her decision in the Quogue sign law issue  
8 and when the state court renders its decision on the  
9 Southampton sign law, we will not, however many months  
10 down the road, have to basically then start with the  
11 discovery that we need on the other claims, and that  
12 could be into the sixth year or the seventh year or who  
13 knows.

14 So what we would urge is that we be given  
15 the opportunity, in parallel with your decision on the  
16 sign law and the state court decision on the  
17 Southampton sign law, to move forward with whatever  
18 depositions are necessary to put the other claims that  
19 I'm enumerated into a situation where they can be  
20 resolved, whether by motion or trial.

21 THE COURT: All right. Let me hear from the  
22 defendants.

23 MR. SOKOLOFF: First of all, there were two  
24 bases for the affirmative defenses that we had here,  
25 one of which your Honor adjudicated, and that's the

1 state law authority issue. The other was an  
2 establishment clause defense.

3 As your Honor knows, the Second Circuit  
4 ruled in another case that it wouldn't violate the  
5 establishment clause, and I'm not foolish enough to  
6 tell you that we don't feel covered by that decision,  
7 regardless of whether we disagree with it. So I'm  
8 prepared, with regard to the establishment clause  
9 affirmative defense or counterclaim, to withdraw those  
10 claims on behalf of the Village of Westhampton Beach.

11 Your Honor has ruled on the state law issue  
12 and denied our request to appeal immediately. I  
13 understand that. In our view, what remains against  
14 the Village of Westhampton Beach are some claims that  
15 A) were not ripe when they were filed, and B) since  
16 during the pendency of this litigation, the plaintiffs  
17 have submitted documents to this Court telling the  
18 Court that they have put up an Eruv and leches in the  
19 Village of Westhampton Beach, the case is frivolous and  
20 moot. So it's not ripe, it's frivolous and it's moot.

21 Two of those go to the Court's subject  
22 matter jurisdiction because if the case isn't ripe, the  
23 Court shouldn't adjudicate the issues that the  
24 plaintiff wants adjudicated. Just for your Honor's  
25 edification, there was a preliminary injunction hearing



1 as soon as this case was started. The plaintiffs --

2 THE COURT: The issue before Judge Wexler.

3 MR. SOKOLOFF: Yes. The plaintiffs' sole  
4 evidence of what the Village of Westhampton did to  
5 allegedly prevent them from putting up an Eruv is one  
6 letter that says nothing. It doesn't say, you're  
7 prohibited from doing so. It doesn't say, you will be  
8 prosecuted if you do so. It says nothing at all.

9 So our view, and I expressed this at the  
10 beginning of this case, was that essentially, what the  
11 plaintiffs want is to come into court and get free  
12 legal advice. And courts don't sit around and issue  
13 decisions just because somebody asks a court, is it  
14 legal? There has to be something that was done that  
15 creates a controversy. All the village did was respond  
16 to the complaint with defenses and with counterclaims  
17 that are now adjudicated.

18 So what I believe has to happen is one of  
19 two things: Either the plaintiffs can say to  
20 themselves, we got the Eruv, it's up, there's no reason  
21 for this Court to further adjudicate this matter as to  
22 the Village of Westhampton Beach and discontinue their  
23 claims against the Village, or the Court should allow  
24 me to move on subject matter jurisdiction to dismiss  
25 the case.

1 THE COURT: All right.

2 MR. SOKOLOFF: So that's where I see this  
3 going, and I hope we could do that without getting  
4 dragged into discovery.

5 THE COURT: I understand a lot of this is  
6 probably just being tossed around for the first time  
7 today, so if you have any immediate response, I'm happy  
8 to hear it.

9 MR. SUGARMAN: I do, your Honor. I frankly  
10 don't understand the ripeness argument. I do  
11 understand the all the village did argument and that  
12 was the position of the village at the preliminary  
13 injunction hearing, but there were no depositions taken  
14 before the preliminary injunction hearing.

15 It's the plaintiffs' view that it's not all  
16 the village did. The only way we're going to be able  
17 to determine that is to take the depositions of the  
18 mayor and the members of the council to see whether the  
19 village did more than that, and whether, as a result of  
20 that, there is support and substantiation for the other  
21 claims that I've enumerated before.

22 So I don't see the justification for an  
23 argument that these other claims should be dismissed  
24 based on a preliminary injunction hearing which took  
25 place before there was any document discovery or

1 deposition discovery. I just don't understand that.

2 MR. SOKOLOFF: Can I just respond briefly?

3 THE COURT: Sure.

4 MR. SOKOLOFF: It's not a motion to dismiss  
5 based upon the preliminary injunction hearing. It  
6 would be a motion to dismiss based on the pleadings, in  
7 other words a 12(c) motion. And the plaintiffs are the  
8 ones who have the burden. According to their claims,  
9 they are saying, you prevented us from putting up an  
10 Eruv. Well, when they came in and said, you prevented  
11 us from putting up an Eruv, they should know what the  
12 village did.

13 They can't come in here and say, you  
14 prevented us from putting up an Eruv but we don't know  
15 how you prevented us, we don't know what you did to  
16 prevent us, we need to take discovery to find out from  
17 you because you know what you did but you never alerted  
18 us to it. That's not a claim.

19 THE COURT: All right. Go ahead.

20 MR. BUCHWEITZ: Your Honor, just one point:  
21 The Village of Westhampton Beach, on July 6, 2012,  
22 withdrew its contention that our complaint should be  
23 dismissed on the ground of ripeness and/or lack of  
24 justiciability, and that was filed in court.

25 MR. SOKOLOFF: That is true and I have the

1 stipulation. However, it was premised upon the  
2 plaintiffs' agreement not to put up an Eruv during the  
3 pendency of this litigation. So that's number one.  
4 Number two, subject matter jurisdiction cannot be  
5 waived. It can be raised at any point during the  
6 litigation, even on appeal.

7 THE COURT: I think part of what they're  
8 raising here is, what is the impact of the stipulation?  
9 And there's case law on that but we'll talk about that.

10 Go ahead.

11 MS. WEISGERBER: Erica Weisgerber for  
12 Verizon.

13 Just to be clear, Westhampton's withdrawal  
14 of its ripeness and justiciability claims was not  
15 premised on Verizon's agreement. Verizon's agreement  
16 to forego putting up the leches was contingent upon  
17 Westhampton Beach unequivocally agreeing to withdraw  
18 its ripeness and justiciability claims.

19 MR. BUCHWEITZ: Your Honor, just one more  
20 point. Yehuda Buchweitz, Weil Gotschall.

21 What I heard from Mr. Sokoloff again for the  
22 first time -- I wish we would have heard this weeks ago  
23 -- about dropping his defenses or his counterclaims.  
24 He has no counterclaims in our case, he has  
25 counterclaims against Verizon and LIPA. So it's not

1 clear to me what he would be dropping. But if he's  
2 saying that he's willing to enter into a judgment on  
3 our declaratory judgment claim that there's no law that  
4 prevents the Eruv and agree to a permanent injunction,  
5 we'd be happy to hear that.

6 THE COURT: All right. We're not going to  
7 resolve this here this moment. Let me go on to round  
8 two here with the next case, and I'll tell you what my  
9 thoughts are when we conclude that. That would be  
10 Verizon's case.

11 MR. SUGARMAN: With respect to the Eruv  
12 Association, you've got Quogue and Southampton.

13 THE COURT: Yes, my apologies, that's right.  
14 We need to get to Quogue, which Mr. Arntsen, I assume  
15 is --

16 MR. ARNTSEN: Yes, that's me, your Honor.

17 THE COURT: Although you don't look like Ms.  
18 DeJong, I assume you're here --

19 MR. ARNTSEN: I'm here in her stead, your  
20 Honor.

21 THE COURT: Okay.

22 MR. ARNTSEN: Essentially, the issue of  
23 whether you have the jurisdiction to decide the  
24 question and the interpretation of the sign ordinance -  
25 - the encroachment ordinance rather is the primary

1 issue that's left to be decided here, at least for the  
2 moment. We believe, as we've argued in the letter  
3 briefing process, that you don't --

4 THE COURT: I don't take any offense at  
5 that.

6 MR. ARNTSEN: Thank you, your Honor. And  
7 you also wrote fairly extensively, I think, in the  
8 Southampton decision on that very subject and held that  
9 you should not exercise supplemental jurisdiction in  
10 that context. So as far as we're concerned, that's the  
11 principal issue that needs resolution before whatever  
12 is to proceed actually proceeds.

13 THE COURT: Okay. Somebody else I missed  
14 here.

15 MS. LICCIONE: That would be me, your Honor.  
16 Good afternoon. Maureen Liccione, Jaspan Schlesinger.

17 Your Honor, with all due respect, I want to  
18 correct some of the statements Mr. Sugarman made in so  
19 far as they relate to the Town of Southampton. Your  
20 Honor will recall that the first complaint against the  
21 Town of Southampton was dismissed, and that was only  
22 after Judge Wexler ruled on the preliminary injunction  
23 hearing that the plaintiff was unlikely to succeed  
24 against the Town of Southampton. So when there's a  
25 reference to four or five years' worth of litigation, I

1 just would ask the Court and the parties to remember  
2 that with respect to Southampton.

3           There's a case that I believe is only a year  
4 old. The second complaint, your Honor dismissed a  
5 significant portion of that and sent it to state court  
6 and stayed the rest of the case. That case, the  
7 Article 78 proceeding, the town is handling as a garden  
8 variety variance application, should we make an  
9 exception to our sign law. So our case is relatively  
10 new in that regard.

11           But more than that, your Honor, I would  
12 submit that moving forward with discovery against  
13 Southampton in particular would not be appropriate at  
14 this time for a few reasons. First, it would work to  
15 the prejudice of Southampton. It's not the town's  
16 fault, if you will, for lack of a better term, that the  
17 plaintiff brought an unripe action against the town.  
18 It was unripe because they did not bring a land use  
19 application. It is not the town's fault that rather  
20 than pursue an Article 78 proceeding to vacate a garden  
21 variety zoning board decision, that the plaintiff chose  
22 to come to federal court instead of proceeding with a  
23 state court remedy.

24           So I think the town is being prejudiced here  
25 by the, if you will and with all due respect, the

1 plaintiffs' choice of inappropriate remedies. I would  
2 add to that, your Honor, that the town spent literally  
3 tens of thousands of dollars on document discovery,  
4 only to have portions of the case dismissed and a stay  
5 issued.

6           The Town of Southampton, I would point out,  
7 is much, much larger than the two villages. It has a  
8 very large year-round population. It has its own  
9 police department. It has innumerable computers and  
10 hardware that had to be searched. The town expended  
11 exorbitant amounts of money -- we are not insured -- to  
12 only have the case dismissed and then partially  
13 dismissed and stayed.

14           Finally, your Honor, and if you'll bear with  
15 me, this is the first I heard from plaintiff that they  
16 would like to vacate the stay that your Honor issued  
17 some months ago. I don't know what the basis would be  
18 to vacate a very long and detailed decision. Counsel  
19 has brought no argument before the Court as to why a  
20 stay should be issued. It hasn't moved to reargue, it  
21 hasn't moved to vacate the stay. Really what plaintiff  
22 is saying is because the other two municipality cases  
23 have been laying around for a long time, the stay  
24 against Southampton should be vacated, and I would  
25 certainly strenuously object to that, your Honor.



1 Thank you.

2 THE COURT: All right.

3 MR. SUGARMAN: Your Honor, may I briefly  
4 respond to that?

5 THE COURT: Sure.

6 MR. SUGARMAN: To call the controversy in  
7 Southampton a "garden variety zoning matter" is just a  
8 misperception of what this is all about. This is about  
9 the denial of First Amendment religious freedom rights  
10 to residents of the Town of Southampton. To pass it  
11 off as a garden variety zoning matter is just a  
12 misperception and a mischaracterization of what this is  
13 all about.

14 One portion was dismissed and that's the  
15 portion that is now in state court, but there are other  
16 portions that assert the free exercise claim, the 1983  
17 claim, the Rilupa claim and on and on, which the  
18 plaintiffs are entitled to have resolved. The fact  
19 that Southampton chose not to be insured and chose to  
20 defend against all these claims is their own choice,  
21 and it ought not to be at all persuasive for them to  
22 come in and plead poverty in effect is what they're  
23 doing -- they're a huge town with a huge budget.

24 The plaintiffs have asserted significant  
25 constitutional, statutory claims against the Town of

1 Southampton. Yes, Ms. Liccione is right, this is the  
2 first time she's heard of our request to lift the stay  
3 but it's the first opportunity that we've had to do it.  
4 And to the extent -- and my recollection is that your  
5 Honor did have an extensive review and opinion with  
6 respect to the dismissal of the one claim but then just  
7 stayed all the rest. I don't recall there being a lot  
8 of either briefing or discussion in your opinion of  
9 that.

10 So I return to where I started, which is we  
11 believe that we should be able to go forward so that  
12 we're not into the seventh and eighth years. Yes,  
13 there was a hiatus but the Town of Southampton was here  
14 at the beginning. They produced all of the documents  
15 that have been requested. We've produced all the  
16 documents to the Town of Southampton. So maybe with  
17 respect to the Town of Southampton, it's a two-and-a-  
18 half-year case as opposed to a four-year case, but it's  
19 a distinction without a difference. Thank you.

20 MS. LICCIONE: Your Honor, may I be heard  
21 very briefly?

22 THE COURT: Sure.

23 MS. LICCIONE: Thank you. Your Honor, if  
24 the state court upholds the zoning board's  
25 determination to not allow this group to defy its sign

1 law, as any other applicant would have to do for any  
2 purpose, religious or otherwise, it would seem to me  
3 that this case is over, that there would be nothing to  
4 litigate. So to put the Town of Southampton through  
5 discovery for a case that could -- either the Supreme  
6 Court of Suffolk County or the Appellate Division  
7 Second Department will put an end to seems to be a  
8 terrible waste of municipal resources.

9           With respect to my reference to "garden  
10 variety," I meant no offense to the plaintiff. But  
11 certainly the issue before Southampton is not before  
12 the Southampton Zoning Board of Appeals. They are  
13 separate entities. The issue before the Zoning Board  
14 of Appeals is, can we make an exception to a zoning law  
15 for anyone? That's the issue. If I'm repeating  
16 myself, I'm sorry. If the Supreme Court or the Second  
17 Department says they were within their rights to do so,  
18 it seems to me there is no federal case. Thank you,  
19 your Honor.

20           THE COURT: Let's move on to Verizon's case  
21 against the Village of Westhampton Beach, et al.

22           MS. WEISGERBER: Erica Weisgerber for  
23 Verizon again, your Honor.

24           Taking each municipality one at a time, and  
25 I believe I likely speak for LIPA as well on most of

1 this but I'll allow Mr. Murdock to --

2 THE COURT: Can I get you a little bit  
3 closer to the microphone? I'm having trouble hearing  
4 you.

5 MS. WEISGERBER: Sure. I said, I believe I  
6 speak on behalf of both utilities but Mr. Murdock will  
7 certainly correct or join in after I'm done. But with  
8 respect to Westhampton Beach first of all, the  
9 utility's primary claim against Westhampton Beach  
10 regarding the applicability and enforceability of their  
11 asserted local ordinances was decided by your Honor's  
12 June 16<sup>th</sup>, 2014 ruling, where the Court ruled that  
13 Westhampton Beach had not passed any ordinance that  
14 prohibited the attachment of leches to utility poles.

15 With respect to our affirmative claims  
16 against Westhampton Beach, the only thing that would  
17 remain is declaratory judgment on our affirmative  
18 claims against them. With respect to Westhampton  
19 Beach's establishment clause claims, certainly if  
20 Westhampton Beach withdraws those claims, they are no  
21 longer in the action. If Westhampton Beach does not  
22 withdraw those claims, we believe the issues are  
23 squarely covered by the Second Circuit's recent  
24 decision.

25 With respect to Westhampton Beach's claims

1 regarding ripeness and justiciability, which we're just  
2 hearing for the first time today, as mentioned, your  
3 Honor, Westhampton Beach withdrew those claims  
4 unequivocally. It's document number 56 on the docket  
5 in this action, 11-CV-252.

6           With respect to Quogue, as mentioned in the  
7 EEEA's case, I believe the primary issue that remains  
8 is whether the Court can determine whether the Quogue  
9 village code applies to the leches in light of the  
10 Quogue Board of Trustees' decision, and that's the  
11 issue that's currently pending before the Court. We of  
12 course believe that the Court can determine that issue  
13 and we believe that the Quogue village code does not  
14 apply to the leches. That issue is also briefed for  
15 your Honor already. We believe that all the issues  
16 remaining between the utilities and Quogue are issues  
17 of law that can be resolved on the papers and that  
18 there would not be remaining issues following that.

19           With respect to Southampton, our claims  
20 against Southampton still remain. Our case actually is  
21 more than four years old against Southampton, your  
22 Honor. Our case was simply stayed against Southampton  
23 pending resolution or refiling of the EEEA's claims and  
24 resolution of the issues pending between the EEEA and  
25 Southampton.

1 I believe the utilities do not think we  
2 require any further discovery on our claims against  
3 Southampton and that those also involve issues of law  
4 that can be resolved on the papers. But at this time,  
5 the case remains -- discovery in the case remains  
6 stayed.

7 THE COURT: Okay.

8 MR. MURDOCK: Good afternoon, your Honor.  
9 For LIPA, Zachary Murdock. I concur with Ms.  
10 Weisgerber's presentation.

11 I would take the opportunity to comment that  
12 hope does spring eternal. After the Second Circuit's  
13 ruling, which obviated I believe the principle and  
14 perhaps the most principled of the municipalities'  
15 grounds for opposing the installation of the eruv. I  
16 certainly hope and I continue to hope that for the  
17 benefit of taxpayers and rate payers, that there could  
18 be a resolution at this point. If anyone has  
19 suggestions along those lines, I'd be happy to  
20 entertain them. Thank you, your Honor.

21 THE COURT: Thank you.

22 MR. SUGARMAN: May I respond?

23 THE COURT: Absolutely.

24 MR. SOKOLOFF: My response to the utilities'  
25 presentation is essentially the same as it was to Mr.

1 Sugarman's. My client is in a different situation than  
2 the other two utilities, the other two municipalities.

3 THE COURT: After a while it all starts  
4 sounding the same, so go ahead.

5 MR. SOKOLOFF: There's an eruv up, or so the  
6 plaintiffs say -- there's an eruv up in Williamson  
7 today. The fact that there is federal litigation  
8 against a municipality who never said you can't put it  
9 up, who never enacted a law that would cover it, yet is  
10 sitting here as a defendant in federal litigation,  
11 really to me is a farce.

12 It would seem to me that the federal courts  
13 have a lot better things to do than to just engage in  
14 academic exercises, but that's all this is against my  
15 client. And now that we're here, I defy the plaintiffs  
16 to point to anything that Westhampton Beach ever did to  
17 prevent them from putting up an eruv.

18 THE COURT: Well, before we start defying  
19 everybody, let me throw this out. One of the things I  
20 really did want to get to today is, in light of the  
21 Second Circuit's decisions, is there any hope here at  
22 all of trying to resolve these cases without the money  
23 it's going to cost everybody to continue litigating  
24 them, the fees mounting.

25 We're in the midst of cross-shifting

1 statutes. We have municipalities on the other end  
2 here. I'm just trying to figure out if -- how should I  
3 put this -- calmer minds can ultimately prevail here.  
4 Really, I'd like you all to be very candid. I'm more  
5 than happy to try to conduct a settlement conference or  
6 get one of my colleagues to conduct a settlement  
7 conference here, if the parties are willing to  
8 participate in good faith to come to a resolution.

9           There are some things today that were  
10 brought up for the first time that I am going to have  
11 you talk to each other about before I decide anything  
12 further. But I really would like an answer to this  
13 question first. Is there any prospect of settling  
14 these cases?

15           MR. SUGARMAN: Your Honor, on behalf of the  
16 East End Eruv Association, we would welcome the  
17 opportunity for your Honor or, in the event that your  
18 Honor doesn't think you should do it --

19           THE COURT: Yes.

20           MR. SUGARMAN: -- one of your colleagues, to  
21 have a round of settlement discussions. We would  
22 approach those in the utmost of good faith, with an  
23 attempt to resolve these questions.

24           THE COURT: Let me switch over to the other  
25 side. Let me work my way back to you. Let's start at



1 the other end of the table first.

2 MR. ARNTSEN: Your Honor, I think  
3 fundamentally, the question of the validity of the  
4 village's encroachment ordinance --

5 THE COURT: Has to be resolved.

6 MR. ARNSTEN: -- is very significant to the  
7 village. As the trustees stated in their decision,  
8 they across the board prohibit anything to be affixed  
9 to these poles for the very reason that the flood gates  
10 could be opened once they start. So the problem we  
11 have --

12 THE COURT: So your clients are concerned  
13 for the ramifications of this down the road.

14 MR. ARNSTEN: Certainly, your Honor, because  
15 nobody knows where --

16 THE COURT: I mean beyond the scope of this  
17 case.

18 MR. ARNSTEN: Yes, I understood you to mean  
19 that, yes, your Honor.

20 THE COURT: Okay.

21 MR. ARNSTEN: So that's a question that  
22 frankly I think needs to be answered and the village  
23 believes it should be answered elsewhere than in this  
24 federal court.

25 THE COURT: Okay.

1 MS. LICCIONE: Your Honor, I would echo Mr.  
2 Arnsten's comments, and I think it's even, if I might,  
3 it's even a shade stronger for the Town of Southampton.  
4 We have a very encompassing sign ordinance that  
5 prohibits anything from being put in the public right  
6 of way or on the poles, with some limited statutory  
7 exceptions.

8 If one thing became clear to me, and I think  
9 in the record, in the preliminary injunction hearing  
10 and in the discovery that I have reviewed, is that the  
11 town -- maybe the word stridently is too strong but the  
12 town vigorously enforces this sign ordinance over its  
13 500-plus miles of roadway and thousands upon thousands  
14 of poles. The flood gates would open and the town  
15 believe that its sign ordinance is at risk and has  
16 ramifications far beyond this case.

17 THE COURT: All right. You're up.

18 MR. SOKOLOFF: Well, I came in here with two  
19 practical suggestions to save people money. One is,  
20 I'm withdrawing the remaining claim that we had. And  
21 two, I'm urging the plaintiffs to discontinue. And if  
22 they do that, they have the eruv that they seek. So  
23 that's my answer.

24 THE COURT: All right.

25 MR. SUGARMAN: Your Honor, two observations.

1 THE COURT: Sure.

2 MR. SUGARMAN: First, with respect to the  
3 Village of Quogue, Judge Wexler denied their request  
4 long ago to send us to state court, and I think we've  
5 made that argument to your Honor and it's before you.  
6 Secondly, I understand the argument that the Town of  
7 Southampton and the Village of Quogue can't do anything  
8 but in a way, I don't understand it, because the  
9 difference between this case and the garden variety  
10 cases that my colleagues are talking about is that this  
11 case involves constitutional rights.

12 So to the extent that there's a willingness,  
13 it would seem to me that there is a way to craft an  
14 agreement in this case so as to preserve the positions  
15 of the Village of Quogue and the Town of Southampton  
16 with respect to the sanctity of their sign laws. We do  
17 have an argument, your Honor, which we will pursue,  
18 that those sign laws are not as sacrosanct as counsel  
19 is claiming, but that's another view.

20 Far be it from me to advise my colleagues  
21 but it seems to me that having been through more than  
22 one of these settlement discussions over the years,  
23 where principle positions have been taken, people find  
24 a way to preserve their principles and still resolve  
25 the case.

1           THE COURT: Let me ask you a question along  
2 those lines. Have you ever presented a proposal to the  
3 village about the wording -- I'm not asking you to buy  
4 this. I'm just thinking out loud here -- proposal as  
5 to the wording of the ordinance that would enable you  
6 to live with what's there and allow them to live with  
7 what's there?

8           MR. SUGARMAN: No. We've never gotten to  
9 that discussion back and forth with them about this  
10 concern and this issue.

11          MR. BUCHWEITZ: Your Honor, one thing that  
12 could be very clear. The Town of Southampton's sign  
13 law, which of course we think doesn't apply, has a  
14 number of exceptions, a number of exceptions. And it  
15 would be very, very simple, if they wanted to, to have  
16 an exception for leches.

17          THE COURT: Okay. Let me just focus on  
18 Quogue for a minute because that's where I am, all  
19 right? As to Quogue -- and what I really don't want to  
20 have happen here is that people are spinning their  
21 wheels for no good purpose.

22          Mr. Arnsten, obviously, I'm putting you on  
23 the spot but I'm doing it anyway.

24          MR. ARNSTEN: Okay.

25          THE COURT: Would your clients do you think

1 even be open to a suggested proposal with regard to the  
2 language?

3 MR. ARNSTEN: Your Honor --

4 THE COURT: Understanding that they have the  
5 right to say, no, we can't live with this. I get that.

6 MR. ARNSTEN: Your Honor, I've been before  
7 this Court enough I think for you to know that I very  
8 rarely foreclose the opportunity to have a discussion.  
9 But that being said, I think the problem with rewording  
10 the ordinance -- again, I don't know what the proposal  
11 might be -- is that it would invoke precisely the type  
12 of constitutional concerns that our ordinance does not  
13 give rise to because it's so plainly worded and so  
14 across the board prohibitive. So to tinker with that,  
15 in my estimation, would be an invitation for a real  
16 problem that again transcends this case.

17 THE COURT: All right.

18 MR. ARNSTEN: I would caution them, if they  
19 were to engage in a discussion, that they would be  
20 really treading on thin ice to try to put wording into  
21 this that would somehow craft an exclusion for a  
22 religious group when, as it's worded now, as they've  
23 already decided themselves, the board, nobody is  
24 allowed to do it. We avoid these questions because of  
25 that.

1 THE COURT: All right. Look, you certainly  
2 have been before me often enough that I know you speak  
3 with candor and you're very straightforward in your  
4 responses.

5 MR. ARNSTEN: Thank you, your Honor.

6 THE COURT: So I've no reason to doubt what  
7 you're telling me. What I don't want to have happen is  
8 that the plaintiffs are put to the additional work of  
9 putting some kind of proposal together and then it's  
10 pretty clear there's virtually no circumstance under  
11 which the town or the village, excuse me, could adopt  
12 it. So if that's the case and that's candidly what  
13 you're telling me, which it sure sounds like what  
14 you're telling me, then I'm not going to put them  
15 through that exercise for nothing.

16 MR. ARNSTEN: I think I would adopt your  
17 Honor's phrasing that there's virtually no chance.

18 THE COURT: Okay. I have no doubt, based on  
19 what I've heard already, that that carries over to  
20 Southampton.

21 MS. LICCIONE: Yes, your Honor, and if I  
22 might just comment briefly. I apologize for laughing a  
23 little bit but the notion that a local law can easily  
24 be tinkered with by the waiving of a magic wand kind of  
25 bespeaks a -- I don't really know the word but a lack

1 of knowledge about the way municipal law works. A  
2 local law has to be noticed and a hearing held. We  
3 cannot enter into a stipulation saying that we will  
4 pass a law. A law has to go through its natural  
5 processes for due process, among other purposes.

6 THE COURT: All right.

7 MS. LICCIONE: So I would just add that to  
8 the mix.

9 THE COURT: Look, one of the things I've  
10 learned, not only as a mediator before I took the bench  
11 but certainly in my experiences trying to do  
12 alternative dispute resolution since I've been on the  
13 bench -- and I do these sessions some weeks every  
14 single day. I can't bring somebody into a settlement  
15 discussion where it's pretty clear to me the parties  
16 feel constrained that no matter what's offered, they're  
17 not going to come to a resolution. So I'm not going to  
18 do that.

19 What I will proceed to do, and I'm  
20 restricting this for the moment, but as to Quogue and  
21 ask to Southampton, I will proceed to do what I have to  
22 do on the pending motions at this point.

23 As to Westhampton Beach, Mr. Sokoloff  
24 brought up a couple of interesting topics and  
25 suggestions today. And I know that for the plaintiffs,

1 it's the first time they've heard this. And what I  
2 would like is for you folks to at least talk further.  
3 I'll give you an opportunity to discuss this before I  
4 take any further action with regard to the Village of  
5 Westhampton Beach.

6 So what I would propose at this point is  
7 that you folks -- I'd really like to make sure you  
8 carve out time for this because this is not a  
9 conversation you're going to have in five minutes. I'm  
10 going to give you the next three weeks to talk to each  
11 other about some of the issues that Mr. Sokoloff raised  
12 today, some of the issues that you've raised today, and  
13 to find out, is there a way to settle all of this, part  
14 of this or none of this, as to the Village of  
15 Westhampton Beach.

16 I want you to report back to me at the end  
17 of that three-week period. If the answer is, we can't  
18 get to a meeting of the minds, then the alternative and  
19 what I do want you to do at that point is to provide me  
20 with a list, please no longer than two pages, of what  
21 you perceive still has to be done in this case.

22 I know you're going to be asking for some  
23 discovery and for me to lift certain stays I put in  
24 place with regard to discovery. I just want a list of  
25 the things you believe the Court has to address at that



1 point, and I want to get those resolved expeditiously,  
2 all right. I really do want to get these cases back on  
3 track and move them forward, so we're not sitting  
4 around here next year saying, now we're in the sixth  
5 year, et cetera. That doesn't behoove any of us.

6 Now these cases have all been officially  
7 reported to Washington as being older than three years  
8 old, so it shows up on all my cases over three years  
9 old. So I have my own incentive for trying to get a  
10 resolution here in the end as well.

11 I appreciate everybody's candor today and in  
12 so many cases like this, not that any of them are  
13 identical by any means, but there are emotional issues  
14 in addition to the legal issues on every side of these  
15 cases. Sometimes it leads us to places that we might  
16 not otherwise go, just in terms of responding to  
17 things. But what I'm saying to you is, we are going to  
18 get a resolution here of each of these cases, one way  
19 or the other, and I really do want to focus on getting  
20 things back on track here.

21 I'm not looking for anything in writing from  
22 Southampton or from Westhampton Beach based on what I  
23 just told you.

24 MR. SOKOLOFF: Quogue.

25 THE COURT: Quogue, excuse me, based on what

1 I just told you.

2 MR. ARNSTEN: Thank you, your Honor.

3 THE COURT: Did you want to say something,  
4 counsel?

5 MS. LICCIONE: Yes, your Honor, if I may.  
6 It's my understanding that my case is stayed pending a  
7 decision from the state court. So in terms of getting  
8 the case back on track, I just want to clarify that  
9 there's really nothing to get back on track at this  
10 point.

11 THE COURT: Unless you get something from me  
12 that says the stay is removed as to Southampton, you  
13 are in your same status.

14 MS. LICCIONE: Your Honor, I would expect  
15 that that would only happen if there were a formal  
16 application to vacate your existing order.

17 THE COURT: Yes. Well, I don't know what's  
18 going to come to me in three weeks. So without giving  
19 any advisory opinions here, I have to wait and see what  
20 I get.

21 MS. LICCIONE: Thank you, your Honor. I  
22 appreciate that.

23 MR. SUGARMAN: Thank you, your Honor.

24 THE COURT: Anything else we need to address  
25 today? All right. Have a good evening. Thank you

1 all.

2 MR. SUGARMAN: Thank you, your Honor.

3 MR. SOKOLOFF: Thank you.

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18 I certify that the foregoing is a correct  
19 transcript from the electronic sound recording of the  
20 proceedings in the above-entitled matter.  
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25 ELIZABETH BARRON

March 17, 2015